



Commonwealth of Virginia

VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

BLUE RIDGE REGIONAL OFFICE
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Robert J. Weld
Regional Director

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
UNITED STATES ARMY (OWNER)
AND
BAE SYSTEMS ORDNANCE SYSTEMS, INC. (OPERATOR)
FOR
RADFORD ARMY AMMUNITION PLANT
VPDES Permit No. VA0000248**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 62.1-44.15, between the Department of Environmental Quality and the United States Army (Owner) and BAE Systems Ordnance Systems, Inc. (Operator), regarding the Radford Army Ammunition Plant, for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the terms in this Consent Order have the meanings assigned to them in Va. Code § 62.1-44.2 *et seq.* and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation at 9 VAC 25-31-10.

SECTION C: Findings of Fact and Conclusions of Law

1. BAE Systems Ordnance Systems, Inc. is a business entity authorized to do business in Virginia and references to BAE Systems Ordnance Systems, Inc. include its affiliates, partners, and subsidiaries. BAE Systems Ordnance Systems, Inc. and the U.S. Army (the

Parties) are “persons” within the meaning of Va. Code § 62.1-44.3.

2. The US Army owns and BAE Systems Ordnance Systems, Inc. operates the wastewater treatment plants associated with Outfalls 007 and 029 located at 4050 Peppers Ferry Rd, Radford, Virginia, which discharges treated wastewater from manufacturing process areas and stormwater from manufacturing building rooftops, the fly ash truck loading area, and other areas located within the outfall areas.
3. VPDES Permit No. VA0000248 (Permit) was issued under the State Water Control Law and VPDES Permit Regulation to the Parties on June 10, 2015 and expired on June 9, 2020 but has been administratively continued. The Permit allows the Parties to discharge wastewater from the outfalls to the New River, in strict compliance with the terms and conditions of the Permit.
4. The New River is located in the New River Basin. The New River is listed in DEQ’s 305(b) report as impaired for *Escherichia coli* (*E. coli*) and PCBs (polychlorinated biphenyls) in Fish Tissue. Industrial Point Source Discharge and Permitted Industrial/Commercial Site Stormwater Discharges are listed among the potential sources of the impairment.
5. The New River is a surface water located wholly within the Commonwealth and is a “state water” under State Water Control Law.
6. BAE Systems Ordnance Systems Inc.’s monthly and quarterly discharge monitoring report indicate that it discharged treated wastewater from Outfalls 005, 007, 026, and 029 for the period of January 1, 2021 through December 31, 2022 into the New River.
7. In submitting its DMRs, as required by the Permit, BAE Systems Ordnance Systems, Inc. has indicated that it exceeded discharge limitations contained in Part I.A.1 of the Permit, from January 2021 through December 2022 as described in Appendix A of this Order.
 - a. Va. Code § 62.1-44.5 states that: “[E]xcept in compliance with a certificate issued by the Department, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances.”
 - b. The Regulation, 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
 - c. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a “certificate” under the statute.
8. The Department has issued no permits or certificates to the Parties other than VPDES

Permit No. VA0000248.

9. BRRO issued Notice of Violations (NOVs) W2021-08-B-0003 on August 27, 2021, W2021-12-B-0002 on January 7, 2022, W2022-03- B-0001 on April 15, 2022, and W2022-05-B-0001 on July 20, 2022 for the exceedances.
10. BAE Systems Ordnance Systems, Inc. responded to the Notice of Violation issued on July 20, 2022 and on July 21, 2022 Department staff held a conference call with representatives of BAE Systems Ordnance Systems, Inc. to discuss the violations. On August 2, 2022, the agency received BAE Systems Ordnance Systems' written response which summarized an investigation conducted by BAE Systems Ordnance Systems, Inc. from approximately November 2021 through April 2022. The investigation by BAE Systems Ordnance Systems, Inc. indicated that some exceedances may have been related to contracted laboratory quality control and procedural issues returning errantly high results. Other exceedances, particularly oxygen demand, appear to have been caused by unexpected microbial instability.
11. The Department concludes that the U.S. Army, as Owner, and BAE Systems Ordnance Systems Inc., as Operator, has violated the conditions of the Permit (paragraph C(7) above), Va. Code §62.1-44.5, and 9 VAC 25-31-50 by discharging treated sewage and municipal wastes from Outfalls 005, 007, 026, and 029.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 62.1-44.15, the Department orders BAE Systems Ordnance Systems, Inc., and BAE Systems Ordnance Systems, Inc. agrees to:

1. Pay a civil charge of \$21,144.75 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

BAE Systems Ordnance Systems, Inc. shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, the BAE Systems Ordnance Systems, Inc. shall be

liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Department may modify, rewrite, or amend this Order with the consent of the Parties for good cause shown by the Parties, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV #s. W2021-08-B-0003 dated August 27, 2021, W2021-12-B-0002 dated January 7, 2022, W2022-03-B-0001 dated April 15, 2022, and W2022-05-B-0001 dated July 20, 2022. This Order shall not preclude the Department or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, the Parties admit the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. BAE Systems Ordnance Systems, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Parties declare they have received fair and due process under the Administrative Process Act and the State Water Control Law and they waive the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Department to modify, rewrite, amend, or enforce this Order.
6. Failure by the Parties to comply with any of the terms of this Order shall constitute a violation of an order of the Department. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Department or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Parties shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of

God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. The Parties shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Parties shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance,
- b. the projected duration of any such delay or noncompliance,
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance, and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Parties. Nevertheless, the Parties agree to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after the Parties have completed all of the requirements of the Order;
 - b. The Parties petition the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. The Director or Department terminates the Order in his or its sole discretion upon 30 days' written notice to the U.S. Army and BAE Systems Ordnance Systems, Inc.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Parties from its obligation to comply with any statute, regulation, permit

condition, other order, certificate, certification, standard, or requirement otherwise applicable.

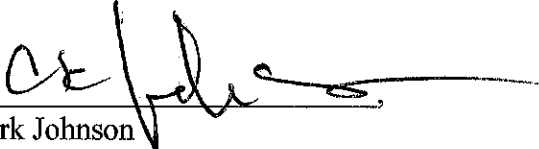
12. Any plans, reports, schedules or specifications attached hereto or submitted by the Parties and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representatives of the Parties certifies that they are a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind the Parties to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Parties.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. In accordance with the Federal Anti-Deficiency Act, the obligations of the U.S. Army under this section are expressly conditioned on the availability of Congressional appropriations, which the U.S. Army agrees to seek in amounts sufficient to timely accomplish these undertakings. If sufficient appropriations are not available and cannot be obtained, the U.S. Army will promptly inform the DEQ Regional Director. In such case, the Director may terminate the Order and take other action, if so desired, or amend the Order with U.S. Army's consent or in accordance with the Administrative Process Act. Nothing in this Consent Order shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 USC 1341, et seq.
16. By signing this order the U.S. Army does not waive Federal Sovereign Immunity. DEQ and the Parties have reached this agreement through this Consent Order in full recognition of their respective positions on waiver of sovereign immunity under the Clean Water Act.
17. By its signature below, the United States Army and BAE Systems Ordnance Systems, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2023.

Robert J. Weld, Regional Director
Department of Environmental Quality


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BAE Systems Ordnance Systems, Inc. voluntarily agrees to the issuance of this Order.

Date: 3/13/2023 By: 
Kirk Johnson
General Manager, RFAAP
BAE Systems Ordnance Systems, Inc.

Commonwealth of Virginia
City/County of MONTGOMERY

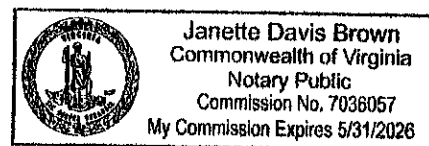
The foregoing document was signed and acknowledged before me this 13TH day of MARCH, 2023, by Mr. Kirk Johnson who is the General Manger for BAE Systems Ordnance Systems, Inc. – RFAAP on behalf of the company.


Notary Public

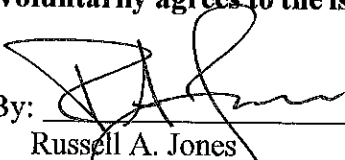
7036057
Registration No.

My commission expires: 31 MAY 2026

Notary seal:



The United States Army voluntarily agrees to the issuance of this Order.

Date: 3/16/23 By: 
Russell A. Jones
Lieutenant Colonel, U.S. Army
Commander RFAAP

Commonwealth of Virginia
City/County of Montgomery

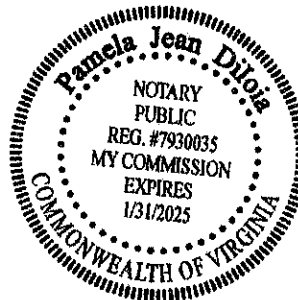
The foregoing document was signed and acknowledged before me this _____ day of _____, 20____, by LTC Russell A. Jones who is the Commander of the Radford Army Ammunition Plant, on behalf of the United States Army, RFAAP.

Pamela Jean DiIorio
Notary Public

7930035
Registration No.

My commission expires: 31 January 2025

Notary seal:



APPENDIX A

DATE	OUTFALL	PARAMETER	PERMIT REQ	REPORTED
1/10/22	029 Monthly	BOD5 qty avg	91.2	>278.8
		BOD5 qty max	243.6	702.6
		BOD5 con avg	60	>62
		BOD5 con max	120	155
		COD qty avg	319.3	717.3
		COD conc max	290	331
		COD qty max	852.6	1500.5
1/10/22	029 Quarterly	Failed Tox rpt	1.0	17.065
1/10/22	007 Quarterly	Failed Tox test	6.6	10.93
1/10/22	007 Monthly	BOD5 qty avg	233	>304
		BOD5 qty max	621	>777
		BOD5 conc avg	24	>24
		BOD5 conc max	64	>63
3/10/22	029 Monthly	BOD5 qty avg	91.2	>297.5
		BOD5 qty max	243.6	422.8
		BOD5 con avg	60	>75
		COD qty avg	319.3	668.6
		COD conc max	852.6	857.0
3/10/22	007 Monthly	BOD5 con avg	233	237
3/10/22	005 Monthly	pH conc min	6.0	3.3
		pH excursion time	60	149
		pH conc max	9	10
4/10/22	029 Quarterly	Tox conc max	1.0	1.7
4/10/22	007 Quarterly	Tox conc max	6.6	>7.28
6/10/22	005 Monthly	pH conc min	6.0	4.4
12/10/22	026 Monthly	CL2 conc avg	0.087	0.140
		CL2 conc max	0.1	4.200